



Paper No. 13

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OFFICE OF PETITIONS

In re Application of
Ping Liou
Application No. 09/253,573
Filed: February 19, 1999
Attorney Docket No. 99.001:
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: DECISION ON PETITION
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This is a decision on the petition, filed March 27, 2001, to revive the above-identified application under 37 C.F.R. §1.137(b) or alternatively, under 37 C.F.R. §1.137(a) or §1.182 or §1.183.

The above-identified application was abandoned for failure to file a proper and timely response to the final Office action mailed July 17, 2000. This Office action set a shortened statutory period for reply of three (3) months from the mailing date of the action. An extension of time under the provisions of 37 C.F.R. §1.136(a) was requested, but was not timely filed. 37 C.F.R. §1.136 provides that a petition for extension of time for filing a response to an Office action must be filed prior to the expiration of the maximum period obtainable to avoid abandonment. In this case, the maximum period obtainable ended midnight, January 17, 2001. The petition for an extension of time was not submitted until March 27, 2001, and thus, cannot extend the period for reply. Accordingly, the above-identified application became abandoned on October 18, 2000. A Notice of Abandonment was mailed on February 16, 2001.

Petitioner asserts, in essence, that the delay in replying to the Office action was unavoidable. According to petitioner, the cause of the delay was petitioner's detrimental reliance on an understanding with the Examiner that the Office action would be withdrawn and a new Office action would be issued. In support thereof, petitioner submitted two examiner interview summary records, made of record in the application January 16 and February 8, 2001 respectively.

Considering the facts and circumstances of the delay at issue, it is concluded that petitioner has met his burden of establishing that the delay was "unavoidable." Moreover, pursuant to the examiner's statements in the interview summary that "finality of the previous action would be withdrawn in a new office action," the finality of the final rejection mailed July 17, 2000 is considered withdrawn. The examiner is authorized to treat the amendment, submitted on petition, as a reply under §1.111, rather than §1.113.

Accordingly, the petition under §1.137(a) is **GRANTED**.

With the instant petition, petitioner submitted a check for \$620 for the petition fee. As consideration under sections other than §1.137(a) is unnecessary, petitioner is only being charged the petition fee of \$55 under §1.17(1). The balance submitted, \$565, will be refunded by Treasury Check, in due course. Likewise, as

no extension of time was obtainable, the extension of time fee submitted (\$945) is being refunded by Treasury Check, in due course.

The application file is being forwarded to Technology Center 1600 for consideration of the amendment filed March 27, 2001.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.



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